

REMARKS

The present response is intended to be fully responsive to all points of objection and/or rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application is respectfully requested.

Applicants assert that the present invention is new, non-obvious and useful. Prompt consideration and allowance of the claims is respectfully requested.

Status of Claims

Claims 14 – 23 and 26 are pending. Claims 14 – 23 and 26 have been rejected.

Claims 17 and 24 have been canceled without prejudice or disclaimer. In making this cancellation without prejudice, Applicants reserve all rights in these claims to file divisional and/or continuation patent applications.

Claim Objections

In the Office Action, the Examiner objected to claim 17 under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Claim 17 has been cancelled. Accordingly, Applicants assert that Examiner's objection is moot.

CLAIM REJECTIONS

35 U.S.C. § 112 Rejections

In the Office Action, the Examiner rejected claim 24 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement and as failing to comply with the enablement requirement. Claim 24 has been cancelled. Accordingly, Applicants assert that Examiner's rejection of claim 24 is moot.

35 U.S.C. § 102 Rejection

In the Office Action, the Examiner rejected claims 14-23 and 26 under 35 U.S.C. § 102(b), as being anticipated by Yassour et al. (US Pat. No. 6,348,063) ("Yassour"). Applicants respectfully traverse this rejection in view of the remarks that follow.

As is well established, in order to successfully assert a prima facie case of anticipation, the Examiner must provide a single prior art document that includes every element and limitation of the claim or claims being rejected. In the Office Action on page 5, the Examiner asserted that "The device [as in Yassour] is capable of being positioned in an aortic arch such that an end extends toward the center of the aortic arch. As seen in Fig. 5, the diverter section may be angled somewhat relative to the anchoring section 90." Applicants respectfully draw the Examiner's attention to Column 7, line 37-50 of Yassour where Fig. 5 of Yassour is described. Yassour specifically teaches that "the deflecting member 98 has its anchoring portion 90 extending within the common carotid artery 38, with a minor portion 94 bearing against a wall of the external carotid artery 42. Here again it is noted that the deflecting member 98 extends across the inlet of ICA 40". (Column 7, lines 45-50). Yassour's description of the device described in Fig. 5 teaches away from Applicants' claim 14 which requires that "said diverter section being constructed to permit flow of the blood through said aortic arch". Applicants assert that nothing in Yassour teaches or suggests using the device in Fig. 5 of Yassour in an aortic arch as is required in Applicants' claim 14. Further, Yassour teaches that the "deflecting member 98 extends across the inlet 54 of ICA 40." Applicants assert that Yassour thereby teaches away from Applicants requirement in claim 14 that "an outer surface configured to face the upstream side of the aortic arch effective to divert emboli in the blood from entering said branch blood vessel."

Accordingly, Applicants respectfully assert that independent claim 14 is allowable over Yassour. Each of claims 15, 16, 18-23 and 26 depends from, directly or indirectly, claim 14, and therefore include all the limitations of those claims. Therefore, Applicants respectfully assert that claims 15, 16, 18-23 and 26 are likewise allowable. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection to independent claim 14 and to claims 15, 16, 18-23 and 26 dependent thereon.

APPLICANT(S): NAOR, Gil et al.
SERIAL NO.: 10/593,113
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Page 7

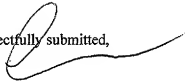
Conclusion

In view of the foregoing amendments and remarks, Applicants assert that the pending claims are allowable. Their favorable reconsideration and allowance is respectfully requested.

Should the Examiner have any question or comment as to the form, content or entry of this Amendment, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Please charge any fees associated with this paper to deposit account No. 50-3355.

Respectfully submitted,



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